NO. 91-8199

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1991

THOMAS LEE DEAL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Supreme Court, U.S.
FILED
5-7- 1992
OFFICE OF THE CLERK

Respectfully submitted,

ROLAND E. DAHLIN II
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Southern District of Texas
Attorney of Record

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25pp

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Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

91-8199

On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, THOMAS LEE DEAL, pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), asks leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), in the United States District Court for the Southern District of Texas and on appeal to the United States Court of Appeals for the Fifth Circuit.

Date:
May 7, 1992

Respectfully submitted,

ROLAND E. DAHLIN II
Federal Public Defender
Southern District of Texas
Attorney of Record

Supreme Court, U.S.
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9

QUESTION PRESENTED

Whether the petitioner's fifth amendment due process rights were violated by not applying the rule of lenity to the "second or subsequent" language in 18 U.S.C. § 924(c)(1).

LIST OF PARTIES BELOW

1. United States of America.
2. Thomas Lee Deal.

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PRAYER

The petitioner, THOMAS LEE DEAL, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit issued February 7, 1992.

OPINIONS BELOW

On February 7, 1992, the United States Court of Appeals for the Fifth Circuit, in a published opinion, affirmed the judgment of conviction in this case. United States v. Deal, 954 F.2d 262 (5th Cir. 1992). A copy of this opinion is attached as Appendix A.

A copy of the judgment and sentence of the district court is attached as Appendix B. The district court did not issue a written opinion.

JURISDICTION

On February 7, 1992, the United States Court of Appeals for the Fifth Circuit entered its opinion affirming the judgment of conviction in this case.

Jurisdiction of the Court is invoked under Section 1254(1), Title 28, United States Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In pertinent part, the fifth amendment of the United States Constitution provides:

> No person shall ... be deprived of life, liberty, or property, without due process of law;...

Section 924(c) of Title 18, United States Code provides in pertinent part:

> (1) Whoever, during and in relation to any crime of violence ... uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence ... be sentenced to imprisonment for five years,... In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years,...
>
> Notwithstanding any other provision of law,.. the term of imprisonment imposed under this subsection [shall not] run concurrently with any other term of imprisonment including that imposed for the crime of violence... in which the firearm was used or carried.

STATEMENT OF THE CASE

Course of Proceedings

The petitioner, THOMAS LEE DEAL, was charged in a thirteen-count superseding indictment with six different bank robberies, in violation of 18 U.S.C. § 2113(a) and (d); with six different uses of a deadly weapon during a crime of violence, in violation of 18 U.S.C. § 924(c)(1); and with being a felon in possession of a firearm, in violation of 18 U.S.C. § 924(g). The Federal Public Defender was appointed to represent Mr. Deal at trial.

A jury trial was held and the jury convicted Mr. Deal on all counts. The court sentenced Mr. Deal to serve 168 months for the bank robberies and for being a felon in possession of a firearm, followed by 105 years for the violations of 18 U.S.C. § 924(c). A breakdown of the 105 years shows that he was sentenced to five years on the first count, to be served consecutive to the sentence for the bank robberies and being a felon in possession of a firearm; and 20 years on each of the remaining five counts, to be served consecutive to each other and to the sentences in all other counts. Mr. Deal timely appealed to the Fifth Circuit Court of Appeals. On February 7, 1992, that court entered its opinion affirming petitioner's convictions.

STATEMENT OF FACTS

Mr. Deal was indicted for the robbery of Ameriway Bank, Houston, Texas, on January 24, 1990; Ameriway Bank, Houston, Texas, on February 23, 1990; Charter Bank (Fountainview), Houston, Texas, on March 1, 1990; Charter Bank (Westheimer), Houston, Texas, on March 5, 1990; First Texas Bank, Houston, Texas, on March 13, 1990; and Charter Bank (Fountainview), Houston, Texas, on April 12, 1990. He was also indicted for using or carrying a firearm in relation to each of these robberies. These twelve violations were charged in one indictment.

The described facts are the only facts pertinent to this petition.

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

This is a prosecution brought by the United States alleging violations of Section 924(c)(1), Title 18, United States Code.

REASONS FOR GRANTING THE WRIT

The petitioner's fifth amendment due process rights were violated by not applying the rule of lenity to the "second or subsequent" language in 18 U.S.C. § 924(c)(1).

The "second or subsequent" language renders the statute ambiguous, because those words carry two different interpretations and a totally absurd penalty results when the opinion rendered by the Fifth Circuit Court of Appeals is applied to Mr. Deal's situation. Before the instant indictment, Mr. Deal had never been convicted of a section 924(c) offense. As shown from the discussion herein, Congress did not envision that a defendant would face such a Draconian penalty the first time he is convicted of violations under this statute.

Before applying the rule of lenity, the wording of a statute must clearly indicate the use of one meaning; if that is impossible, then the indication must be gotten from the legislative history. See Chapman v. United States, 111 S.Ct. 1919, 1926 (1991)(citations omitted). If these examinations fail to point to which meaning was intended, then the rule of lenity is applied and

the ambiguous statute must be construed in favor of the defendant by adopting the less harsh meaning. See Ladner v. United States, 358 U.S. 169, 177 (1958).

A. Statutory Ambiguity Exists in Unclear Language.

When examining a statute, it is always considered that Congress uses words as they are commonly and ordinarily understood. Perrin v. United States, 444 U.S. 37, 42 (1979); United States v. Yeatts, 639 F.2d 1186, 1189 (5th Cir. Unit B), cert. denied, 452 U.S. 964 (1981). The plain language of the statute controls absent a clearly expressed legislative intent to the contrary. United States v. Raymer, 876 F.2d 383, 389 (5th Cir.), cert. denied 110 S. Ct. 198 (1989). Any interpretation that renders parts or words in a statute inoperative or superfluous is to be avoided. Weinberger v. Hynson, 412 U.S. 609, 633 (1973). Before concluding that a statute is truly ambiguous, all sources of legislative intent must be reviewed. United States v. Davis, 656 F.2d 153, 158 (5th Cir. Unit B), cert. denied 456 U.S. 930 (1982).

In pertinent part, 18 U.S.C. § 924(c) provides as follows:

> (1) Whoever, during and in relation to any crime of violence...uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence...be sentenced to imprisonment for five years,... In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years,...
>
> Notwithstanding any other provision of law,.. the term of imprisonment imposed under this subsection [shall not] run concurrently with any other term of imprisonment including that imposed for the crime of violence ... in which the firearm was used or carried.
> (emphasis added)

The underlined language is facially ambiguous. Because "subsequent" may be subsumed within the meaning of "second," as a second conviction must always be subsequent to the first, these two words provide no meaningful description to how the statute is intended to function. If not subsumed, then those words are rendered meaningless, because the meaning attached to "conviction" is unclear.

B. Split in Circuits: Reading the Legislative History

Section 924(c) was enacted as part of the Gun Control Act of 1968 and was offered as an amendment on the floor of the House of Representatives. See Simpson v. United States, 435 U.S. 6, 13 (1978). The only legislative history is contained in Congressional debates over the amendment. See 114 Cong. Rec. 22229-48 (1968). The Eleventh Circuit Court of Appeals, which provided the seminal case on section 924(c), found the "second or subsequent conviction" language conclusive and that the intent of Congress supported the conclusion that the enhancement provision had been legitimately triggered. United States v. Rawlings, 821 F.2d 1543, 1546 (11th Cir.), cert. denied 484 U.S. 979 (1987). The interpretation urged in that opinion, and followed by five other circuit courts, does not carry out the intent of Congress.

In its opinion, the Fifth Circuit did not consider the legislative history, because it concluded that the statutory language is not ambiguous. See United States v. Deal, 954 F.2d 262 (5th Cir. 1992). That court accepted the reasoning in Rawlings and its progeny. Id. at 263. It apparently also accepted the

government's supposition that Congress used that language to prevent prosecutors from manipulating the manner of charging offenses. See Id. Nothing in the legislative history supports the government's supposition. See 114 Cong. Rec. 22229-48 (1968). The Rawlings opinion correctly quotes from the comments of the sponsors of the bill regarding the sentencing provisions of section 924(c). These quotations, however, do not consider the totality of the Congressional discussions. In an opinion that creates a split in the circuits, the Tenth Circuit Court of Appeals has thoroughly examined the legislative history and concluded that the enhancement provision is not triggered in a factual situation exactly the same as Mr. Deal's. See United States v. Abreu, 1992 U.S. App. LEXIS 6654 (10th Cir.).

The focus of the Congressional debate was on enacting legislation that would "provide the strongest deterrent to preclude the repetition of the crimes of violence and the unlawful use of firearms in their commission." 114 Cong. Rec. 22234. "[T]hey [criminals] seldom get in there long enough for the psychologist and the penologist to shake hands with them before they are out again." Id. at 22230. Throughout the discussion, the members emphasized that the sentences be mandatory and that they not be suspended. See id. The enhanced penalty was provided so that repeat offenders would receive stronger punishment than they did the first time they served a sentence of imprisonment. Greater punishment because of the nature of the crime and the recidivist nature of the offender is an accepted principle. United States v. Hayden, 898 F.2d 966, 967 (5th Cir. 1990)(citing Solem v. Helm, 463

U.S. 277 (1983)). Although it appears that Congress was concerned with recidivism, no discussion occurred on the use of "second or subsequent convictions." We are therefore left with no indication of how the statute is to be applied when faced with the issue herein: whether the sentence enhancement provision is triggered when the offenses are charged in a single indictment. When the enhancement is applied under these circumstances, the result is Draconian. Imposing the penalty on offenses charged in the same indictment causes a defendant to be punished as a recidivist before he has been released from his first imprisonment. Congress definitely intended to focus on recidivists and there is no evidence that Congress intended that a defendant be treated as a recidivist in the first adjudication.

C. Rule of Lenity Must be Applied in this Case.

Mr. Deal was sentenced to five years imprisonment for the first offense in the indictment under 18 U.S.C. § 924(c)(1) and twenty years imprisonment for each of the remaining five counts under that statute, for a total sentence of 105 years. The statute is ambiguous, and the rule of lenity must be applied to avoid an absurd or glaringly unjust sentence. See Chapman, 111 S.Ct. at 1926.

"When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity." Ladner, 358 U.S. at 178. The courts may not create ambiguity where Congress has clearly manifested its intention. Bifulco v. United States, 447 U.S. 381, 387 (1980).

Applying the policy of lenity requires that the court adopt the less harsh meaning when neither the wording of the statute nor its legislative history points clearly to either meaning. Ladner, 358 U.S. at 177. The Fifth Circuit Court of Appeals has itself long recognized that a federal criminal statute should be construed narrowly in order to encompass only that conduct that Congress intended to criminalize. Yeatts, 639 F.2d at 1189. Furthermore, this Court has held that a statute will not be interpreted as increasing the penalty an individual faces when the interpretation is based on a guess as to what Congress intended. Simpson 435 U.S. at 15 (1978) (quoting Ladner, 358 U.S. at 178)). Any punishment authorized by statute is permissible "so long as that penalty is not cruel and unusual ... and so long as the penalty is not based on an arbitrary distinction that would violate the Due Process Clause of the Fifth Amendment." Chapman, 114 L.Ed.2d at 538 (citations omitted).

A term of imprisonment of 105 years is harsh punishment for one who has never been a recidivist. Mr. Deal was punished for both his first and second offenses at the same time, which defeats the purpose of providing a stronger penalty for repeat offenders than the first time they served a sentence of imprisonment for violations of 18 U.S.C. § 924(c). Mr. Deal's punishment was cruel and unusual in light of the fact that he received a sentence of only 13 years for the underlying bank robberies. The sentence of 105 years is also arbitrary because the Fifth Circuit's interpretation of "second or subsequent conviction" sometimes results in cruel and unusual punishment.

The legislative history reveals nothing on the intentions of Congress in using this language. As this Court has stated, a straightforward reading of a statute must not "produce a result 'so absurd or glaringly unjust' ... as to raise a 'reasonable doubt' about Congress's intent." Chapman, 111 S.Ct. at 1926-27.

The mere fact that both the petitioner and the government could discern two different reasons for using this language emphasizes the inherent ambiguity. Narrowly construing section 924(c) and applying the policy of lenity requires that mandatory, concurrent five year sentences be imposed for offenses charged in a single indictment when no punishment has been previously served.

CONCLUSION

For these reasons, the petitioner respectfully prays that his application for a writ of certiorari be granted by this Court.

Date:
May 7, 1992

Respectfully submitted,

ROLAND E. DAHLIN II
Federal Public Defender
Southern District of Texas

Roland E. Dahlin II

By_____
DOLA J. YOUNG
Assistant Federal Public Defender
Attorneys for Petitioner
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Houston, TX 77208-1508
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Conclusion

Because we conclude that we lack jurisdiction to review the district court's order and that a writ of mandamus is not an appropriate remedy here, the appeal is dismissed and the application for a writ of mandamus is denied.

Appeal DISMISSED; Mandamus DENIED.

UNITED STATES of America, Plaintiff-Appellee,

v.

Thomas Lee DEAL, Defendant-Appellant.

No. 91-2407.

United States Court of Appeals, Fifth Circuit.

Feb. 7, 1992.

Defendant was convicted in the United States District Court for the Southern District of Texas, Norman W. Black, J., of various counts of bank robbery involving use of deadly weapon and one count of being felon in possession of firearm, and he appealed from sentencing. The Court of Appeals, DeMoss, Circuit Judge, held that "second or subsequent conviction" within meaning of statute providing enhanced penalties for use of deadly weapon during crime of violence can result from same indictment as first conviction under that statute.

Affirmed.

Criminal Law ⇐1202.9

Defendant's second conviction under statute providing additional penalty for use of gun during crime of violence triggered enhancement for "second or subsequent conviction" even though the second or subsequent conviction resulted from a separate count, involved in indictment leading to first conviction. 18 U.S.C.A. § 924(c).

Roland E. Dahlin, Federal Public Defender, Dola Young, Asst. Federal Public Defender, Houston, Tex., for defendant-appellant.

Paula C. Offenhauser, D.R. Millard, III, Asst. U.S. Attys., Ronald G. Woods, U.S. Atty., Houston, Tex., for plaintiff-appellee.

Appeal from the United States District Court for the Southern District of Texas.

Before REAVLEY, HIGGINBOTHAM and DeMOSS, Circuit Judges.

DeMOSS, Circuit Judge:

Thomas Lee Deal ("Deal") went on a crime spree in the Houston, Texas area, committing six armed robberies of various banks during the period of January through April 1990. In each robbery he used a gun. When caught, he was indicted in a 13 count superseding indictment with six counts of bank robbery involving offenses under 18 U.S.C. § 2113(a) and (d); six counts involving use of a deadly weapon during a crime of violence in violation of 18 U.S.C. § 924(c); and one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). The jury found Deal guilty on all counts. The probation office considered the six counts of 18 U.S.C. § 924(c) as six separate convictions and applied the statutory enhancement which raises the penalty from five years to twenty years per count for each of the "second or subsequent" convictions. This resulted in a sentence recommendation of 105 years on the § 924(c) counts and as Congress mandated, these sentences were to run consecutively. Deal made the proper objections to the trial court, but the district judge sentenced in accordance with the probation officer's recommendations.

Deal appealed on the single grounds of whether or not the District Court imposed the proper sentence in connection with the counts of conviction under 18 U.S.C.

§ 924(c). The issue raised by Deal is a question of law; and the standard of review is therefore *de novo*. *Walter v. Torres*, 917 F.2d 1379, 1383 (5th Cir.1990). This is the first occasion on which this Court has had to address this question.

The pertinent part of 18 U.S.C. § 924(c) provides:

> Whoever, during and in relation to any crime of violence ... for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence ..., be sentenced to imprisonment for five years,.... *In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years,....*
>
> Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence ... in which the firearm was used or carried. (emphasis added)

Deal urges that Congress' use of the disjunctive "second or subsequent" to modify "conviction" in § 924(c) creates an ambiguity because the meaning of "second" is subsumed into the meaning of "subsequent." Deal argues that under the plain meaning of "subsequent", the provision should be interpreted to require that an offender be convicted under *separate* indictments before the enhancement provision could apply. Since he was convicted for several offenses charged in the same indictment, Deal argues that he was not subject to a "subsequent conviction"; and, therefore, he should not have received an enhanced sentence.

The government contends that Congress included, "second or subsequent conviction" to cover both the situation where a defendant is convicted of more than one § 924(c) offense in one indictment and the situation where the separate offenses are charged in separate indictments. The government argues that Congress wisely put this language in to preclude prosecutors from having discretion to control the imposition of the enhancement by the manner of charging the offenses.

If this were a matter of first impression before any Circuit Court, we might be inclined to explore the controversy further. However, the Eleventh, Eighth, Sixth, Seventh and Fourth Circuits have previously determined that a "second or subsequent conviction" under 18 U.S.C. § 924(c) can result from the same indictment as the first conviction under § 924(c). *See, United States v. Rawlings*, 821 F.2d 1543, 1545 (11th Cir.), *cert. denied*, 484 U.S. 979, 108 S.Ct. 494, 98 L.Ed.2d 492 (1987); *United States v. Hamblin*, 911 F.2d 551, 555 (11th Cir.1990), *cert. denied sub. nom., Jones v. United States*, — U.S. —, 111 S.Ct. 2241, 114 L.Ed.2d 482 (1991); *United States v. Foote*, 898 F.2d 659, 668–69 (8th Cir.), *cert. denied sub. nom., Thompson v. United States*, — U.S. —, 111 S.Ct. 112, 112 L.Ed.2d 81 and *Williams v. United States*, — U.S. —, 111 S.Ct. 342, 112 L.Ed.2d 307 (1990); *United States v. Nabors*, 901 F.2d 1351, 1358–59 (6th Cir.), *cert. denied*, — U.S. —, 111 S.Ct. 192, 112 L.Ed.2d 154 (1990); *United States v. Bennett*, 908 F.2d 189, 194–95 (7th Cir.) *cert. denied*, — U.S. —, 111 S.Ct. 534, 112 L.Ed.2d 544 (1990); *United States v. Luskin*, 926 F.2d 372, 375 (4th Cir.), *cert. denied*, — U.S. —, 112 S.Ct. 68, 116 L.Ed.2d 43 (1991).

In the present case, each of counts 2, 4, 6, 8, 10, and 12, which were the counts alleging violations of § 924(c), related to bank robberies committed on different days involving different banks and different times. We hold, therefore, that the District Court correctly imposed the proper sentence in this case, including the enhancements resulting from "second or subsequent" convictions under 18 U.S.C. § 924(c).

For the foregoing reasons, the judgment is AFFIRMED.

ENTERED

United States District Court

APR 29 1991

SOUTHERN District of TEXAS

Jesse E. Clark, Clerk
By Deputy:

UNITED STATES OF AMERICA
V.

THOMAS LEE DEAL
(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: H-90-00315-S-01

Dola Young
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____
☒ was found guilty on count(s) 1-13 on January 23, 1991 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)

See Page 1a

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).
☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.
☒ It is ordered that the defendant shall pay a special assessment of $ 650.00, for count(s) 1-13, which shall be due ☒ immediately ☐ as follows:

CLERK, UNITED STATES DISTRICT COURT, Attention: Finance, P. O. Box 61010, Houston, Texas 7720

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid, UNITED STATES ATTORNEY'S OFFICE, Financial Litigation Unit, P. O. Box 61129, Houston, Texas 77208.

Defendant's Soc. Sec. No.: 458-70-6892

Defendant's Date of Birth: 09-23-46

Defendant's Mailing Address:
Harris County Jail
1301 Franklin
Houston, Texas 77002

Defendant's Residence Address:
Harris County Jail
1301 Franklin
Houston, Texas 77002

April 12, 1991
Date of Imposition of Sentence

Signature of Judicial Officer
NORMAN W. BLACK
UNITED STATES DISTRICT JUDGE
Name & Title of Judicial Officer

4-26-91
Date

APPENDIX B

Title & Section	Nature of Offense	Date Offense Concluded	Count Numbers
18:2113(a) & (d)	Robbing a bank by use of force at gunpoint	1-24-90 3- 1-90 3- 5-90 3-13-90 4-12-90	1, 5, 7, 9, 11
18:924(c)	Use and possession of a firearm during or in relation to a crime of violence	1-24-90 2-23-90 3 -1-90 3- 5-90 3-13-90 4-12-90	2, 4, 6, 8, 10, 12
18:2113(a)	Robbing a bank	2-23-90	3
18:922(g)	Unlawful receipt and possession of a firearm	4-12-90	13

Defendant: THOMAS LEE DEAL
Case Number: H-90-00315-S-01

IMPRISONMENT

The defenda t is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of ONE HUNDRED SIXTY-EIGHT (168) MONTHS on Counts 1, 3, 5, 7, 9, & 11, each count to be served concurrent to each other;

ONE HUNDRED TWENTY (120) MONTHS on Count 13, to be served concurrent with Counts 1, 3, 5, 7, 9, & 11;

FIVE (5) YEARS on Count 2, to be served consecutive to Counts 1, 3, 5, 7, 9, 11, & 13;

TWENTY (20) YEARS on each of Counts 4, 6, 8, 10, and 12, to be served conseeutive to each other and to Counts 1, 2, 3, 5, 7, 9, 11, and 13.

☒ The court makes the following recommendations to the Bureau of Prisons: None.

☒ The defendant is remanded to the custody of the United States marshal.
☐ The defendant shall surrender to the United States marshal for this district.
- ☐ at _____ a.m. / p.m. on _____
- ☐ as notified by the United States marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.
- ☐ before 2 p.m. on _____
- ☐ as notified by the United States marshal
- ☐ as notified by the probation office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at

_____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

Case Number: H-90-00315-S

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of FIVE (5) YEARS on Counts 1, 5, 7, 9, and 11; THREE (3) YEARS on Counts 2, 3, 4, 6, 8, 10, 12, & 13.
(The term imposed on Counts 1-13 to run concurrent to each other)

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☒ The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

☒ The defendant shall not possess a firearm or destructive device.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

APPROVED AS TO FORM: [signature]

★U.S.GPO:1990-722-449 10288

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1991

THOMAS LEE DEAL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

CERTIFICATE OF SERVICE

ROLAND E. DAHLIN II, a member of the Bar of this Court, certifies that, pursuant to Rule 29.5, he served the preceding Petition for Writ of Certiorari and the accompanying Motion for Leave to Proceed in Forma Pauperis on counsel for the Respondent by enclosing a copy of these documents in an envelope, first-class postage prepaid and addressed to:

The Honorable Kenneth W. Starr
Solicitor General of the United States
Department of Justice
Washington, D.C. 20530

and depositing the envelope in the Main Post Office, United States Postal Service, 401 Franklin Street, Houston, Texas 77201-9998, on May 7, 1992, and further certifies that all parties required to be served have been served.

Roland E. Dahlin II

ROLAND E. DAHLIN II